IN THE HIGH COURT OF JUDICATURE AT BOMBAY

O.O.C.J.

SUMMONS FOR JUDGMENT NO. 956 OF 2003

IN

SUMMARY SUIT NO. 2826 OF 2003

Sanat Bhattacharya .....**Plffs.**

vs.

ESAB India Ltd .....**Defnds.**

A L O N G W I T H

SUMMONS FOR JUDGMENT NO. 967 OF 2003

IN

SUMMARY SUIT NO. 1499 OF 2003

ESAB India Ltd .....**Plffs.**

vs.

Shri Sanat K. Bhattacharya ....,**Defnds**

Mr. Milind Vasudev with Ms. Jyotsna Mukherji i/b. Rajani Associates for the plaintiffs.

Mr. A. Tur i/b. P.T. Range for the defendants.

CORAM: S.U. KAMDAR, J.

DATE : 17TH AUGUST, 2005.

P.C. :.

1. These two summons for judgment arises in two Suits being Summary Suit No. 1499 of 2003 which has been filed by the employer and Summary Suit No. 2826 of 2003 which is filed by the employee of the said company. It is the case of the employer that the salary has been excess withdrawn by the defendant employee to the extent of Rs.39.00 lacs and therefore the said amount should be refunded

and on the basis of which the present suit is filed as a summary suit for refund of the aforesaid amount. My attention has been drawn to the agreement dated 19.10.2001 particularly clause (1a), 1(b) and 1(d) thereof. It is an admitted position that Clause-1(d) of the said agreement was modified by subsequent agreement dated 2.4.2002. However it is the case of the company that inspite of the fact that there were losses and as such the employer is entitled to the reduced salary as provided under Section (II) and Part-(I) of Schedule (XIII) of the Companies Act, I of 1956 the plaintiff has paid the defendant the excess amount and thus the said amount is due and payable. Insupport of the aforesaid contention the defendant has relied upon a resolution passed by the board of directors dated 7.1.2003 and it has been contended that the board of directors has resolved that the excess paid is Rs.41,66,197/-. The same computation is arrived at subject to the audit of the auditor. It is an admitted position that the auditor has not audited the said account. In that view of the matter I am of the opinion that the

present suit can not be tried as a summary suit as there is no debt due and payable and or any liquidated amount due and payable under the written agreement which has been executed between the parties. The case of excess salary paid will have to be required to be tried. It will also be required to be tried that whether the conditions stipulated in Clause-1(d) has been satisfied or not. In that view of the matter I am of the opinion that the company's Summons for Judgment is liable to be dismissed and the unconditional leave to defend is required to be granted to the defendant employee.

2. In my opinion similar is the situation inrespect of the Summons for Judgment initiated by the defendant employee in his Summary Suit No. 2826 of 2003. His claim in the suit is for a higher salary then what is stipulated as a minimum salary under Clause-1(d). It is the case that the loss suffered by the company are not due to his performance and as such he is entitled to higher salary. Furthermore the claim for bonus is also

made in that suit. However the claim for bonus is also requires condition to be satisfied such as the shareholders approval and central government. It also requires to be computed on the basis of evaluation of his over all performance. Admittedly all such conditions are are not complied with. In view thereof the claim for higher salary and or for a bonus as laid down by the defendant requires to be tried. In my view in both the cases there are triable issues to be determined. Therefore unconditional leave is granted to both defendants in both the suits. The suits are transferred to the list of Commercial Causes. Written statement or points of defence to be filed four weeks from today. Affidavits, list of documents to be filed within four weeks thereafter. Inspection within four weeks thereafter. Suit to be on board of the learned Judge taking Commercial Causes

3. Both the summons for Judgment are disposed off accordingly.

sd/-

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